

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

\* \* \* \* \* 19CV11457-IT  
ANYWHERECOMMERCE, INC., \*  
et al \*  
VS. \* AUGUST 12, 2019  
\* 12:00 P.M.  
INGENICO, INC., et al \*  
\* BOSTON, MA  
\* \* \* \* \*

BEFORE THE HONORABLE INDIRA TALWANI

DISTRICT JUDGE

(Scheduling Conference)

**APPEARANCES:**

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1 12 AUGUST 2019 -- 12:00 P.M.

2 THE CLERK: United States District Court is now  
3 in session, the Honorable Indira Talwani presiding.  
4 This is Case No. 19CV11457, AnywhereCommerce, Inc.,  
5 et al, v. Ingenico, Inc., et al.

6 Will counsel please identify themselves for the  
7 record.

8 MR. GRIFFIN: Oliver Griffin for Plaintiff.

9 MS. BOZEMAN: Melissa Bozeman for Plaintiff.

10 MR. RUDOLPH: Robert Rudolph for Plaintiff.

11 MR. TARANTINO: Good afternoon, Your Honor.  
12 John Tarantino for the Defendants.

13 MR. WRAY: Good afternoon, Judge. William Wray  
14 for the Defendant.

15 THE COURT: Good afternoon. Please be seated.

16 So this is a scheduling conference. And I have  
17 your proposed timetable for discovery, you now have my  
18 order, so initial disclosures, answer, everything  
19 should now follow from these timelines. So answer  
20 would have been due 14 days after the order on the  
21 motion to dismiss. I've lost track of time, but --

22 MR. TARANTINO: Your Honor, it's due on  
23 Thursday. We're going to be filing it this Thursday,  
24 answer and counterclaim.

25 THE COURT: Thank you.

1           And initial disclosures will be due 14 days  
2     after that, sounds fine. Amendments to pleading is of  
3     course motions for leave to amend, and this is halfway  
4     through your proposed discovery, that's fine. I'm  
5     either going to suggest that you have an earlier due  
6     date for serving your requests for production or that  
7     you eliminate this deadline altogether. The point of  
8     it is to try to have everyone understand that fact  
9     discovery closes with things ending up being completed.  
10    If you're serving a request for production on  
11    March 2nd, the chance of having everything in on  
12    April 1st is pretty non-existent.

13           So if the parties think it would be helpful to  
14    set an interim date for making sure your requests for  
15    production are served, I'm happy to set that.

16           MR. TARANTINO: Your Honor, just my view on  
17    that: We've had, and I expect we'll continue to have,  
18    a pretty cooperative relationship with the Plaintiffs'  
19    counsel. If there's an option of setting an earlier  
20    date or not putting in a date, I'm pretty confident  
21    counsel can work that out so that, by the close of  
22    discovery, which we have here, everything will be  
23    served.

24           MS. BOZEMAN: I agree, Your Honor.

25           THE COURT: So I'll just eliminate the request

1 for production date. I'll leave in the request for  
2 admissions.

3 And let's get a status conference around  
4 April 1st.

5 April 2nd at 2:15.

6 So let me ask you this next question, which is:  
7 Is this a case that a referral to a Magistrate Judge  
8 for mediation would be helpful?

9 MS. BOZEMAN: Your Honor, we talked about that  
10 with counsel, and I think we were both -- you know, had  
11 not fully been convinced either way. But I think that  
12 that we were leaning towards just being in front of  
13 Your Honor.

14 MR. TARANTINO: I think it's a different  
15 question that you asked, Your Honor.

16 THE COURT: Yeah. This isn't the consent  
17 question.

18 MS. BOZEMAN: Okay.

19 THE COURT: This is just mediation. If you'd  
20 like, we have an excellent -- our Magistrate Judges are  
21 available for mediation. It saves you the money of  
22 private mediation. They tend to be very good. So  
23 we -- I make them available at different stages in the  
24 case. Some cases will never go to mediation. I don't  
25 force anyone to mediation. But some parties find it

1       very helpful.

2               We also, to the extent that it's possible to  
3       accommodate it, if you think that you have -- that  
4       there's a particular Magistrate Judge here who would  
5       work well with your clients, you're welcome to jointly  
6       request someone. But they tend to have a pretty good  
7       success rate. But that's completely separate from the  
8       consent question.

9               MR. TARANTINO: Your Honor, my view on that is  
10      that certainly we think there can be a productive  
11      mediation at some point in time. With respect to the  
12      Magistrate Judge, my suggestion would be, if there's a  
13      particular Magistrate Judge who is either knowledgeable  
14      or experienced in intellectual property issues, that  
15      would be quite helpful in this case.

16              And my view would be to try with a Magistrate  
17      Judge first. If for some reason the -- these are  
18      pretty complex intellectual property issues. There's  
19      also, obviously, the ability to go to a private  
20      mediator, but we could probably save a lot of money  
21      going to the Magistrate Judge.

22              THE COURT: So I think it's something for you to  
23      probably talk to your peers. I do think some of our  
24      Judges do have a reputation in the community of having  
25      done more successful intellectual property mediations,

1 but I think I'll leave that to you to make that  
2 decision. But, you know, if you think mediation would  
3 be helpful, and I think in these cases often it may be,  
4 think hard about whether it would be good to start it  
5 early before you get the expenses of discovery or  
6 whether there is some targeted discovery you need first  
7 or whether you want a complete fact discovery. You can  
8 tell your clients that I tend to ask this question  
9 whenever I see counsel, so no one has to be the one  
10 looking for mediation first.

11 So if you think at this point that you're ready  
12 for a referral, I would do that. But, otherwise, at  
13 any point, if you want to jointly make a request  
14 through the Clerk, I would put that order in.

15 MS. BOZEMAN: Your Honor, I think it would be  
16 premature right now, as pleadings haven't closed. But  
17 we'd be more than willing to revisit it once the legal  
18 issues are better framed.

19 MR. TARANTINO: We can do that again,  
20 Your Honor, have a discussion with counsel and, you  
21 know, make a submission to the Court, a request to the  
22 Court, at some appropriate time in the future.

23 THE COURT: Okay. And that, you could do it  
24 formally on the docket. You're also welcome to, as  
25 long as you copy the other side, send that through my

1 Clerk.

2 MR. TARANTINO: Thank you.

3 THE COURT: The other -- the next question that  
4 I ask at these sessions -- well, I'm happy to adopt the  
5 dates that you have included here for expert  
6 disclosures and for dispositive motions, but I tend to  
7 ask at the status conference that follows fact  
8 discovery two questions. One is: Are you in fact  
9 intending to file a dispositive motion? And if the  
10 answer is yes, does either side need expert discovery  
11 for that dispositive motion? If the answer to that is  
12 no, I will switch the order so that we'll do the  
13 dispositive motions before you incur the costs of  
14 expert discovery. If either side thinks they need the  
15 experts, then we will keep the order as you have it.

16 So those are the things I need to cover. Two  
17 matters that come up with some frequency, the one is  
18 protective orders, I have no problem with the parties  
19 exchanging -- having an agreement, having me sign it  
20 for the exchange of discovery. I view First Circuit's  
21 directive, however, that, if I am being asked to  
22 consider something in connection with a decision I'm  
23 making, I have to determine if there's any good reason  
24 for not having it on the public docket.

25 So at the point when you're filing your

1       dispositive motions, you can't just put things under  
2       seal because it's signed under the protective order,  
3       and your protective order shouldn't say that you're  
4       simply going to file things under seal. What would  
5       happen, if you need to rely on something that one side  
6       or the other has designated as confidential under one  
7       of these orders, is that that party needs the  
8       opportunity to and should be filing a motion for the  
9       document to be filed under seal that gives a reason  
10      that meets the standards under the Rule, rather than  
11      simply the fact that it's something you agreed upon.

12             One device I am happy to have you use to avoid  
13      unnecessary costs and efforts here is that, if you have  
14      a document that has material that you need to keep --  
15      one side needs to keep confidential and it is not  
16      something that I need to see, I have no problem with  
17      the parties agreeing to my seeing redacted documents  
18      only. So, for example, if there's a contract and you  
19      don't want the dollar value of the contract out to your  
20      competitors but you're asking me to look at language in  
21      the contract, you could agree on a redacted version of  
22      that, and that's fine with me.

23             The second thing is discovery disputes. The  
24      Rules of Civil Procedure now state, after the last  
25      couple of years, actually, that Judges should consider



1 requiring conferences before discovery motions are  
2 filed. I don't require them, but I do try to make  
3 myself available for them. So if you are hitting a  
4 discovery dispute before you paper it up, you are  
5 welcome to contact my Clerk with a copy to the other  
6 side. I will try to get you in within a day or two,  
7 either here or by telephone, and just see if it's  
8 something I can give you some general guidance on. If  
9 it's something super complicated, I'll tell you to  
10 brief it, and then I'll probably refer it to the  
11 Magistrate Judge. But if I can give some direction, I  
12 will.

13 So that's all I have. Anything else from the  
14 parties?

15 MR. TARANTINO: Your Honor, one thing that I  
16 expect we'll be filing this week, within a day or so,  
17 is I believe the parties have agreed that one of the  
18 Defendants, named Defendants, should be dismissed from  
19 the case. It's a defunct entity, so we'll --

20 THE COURT: Okay.

21 MR. TARANTINO: -- send a proposed stipulation  
22 to Plaintiffs on that.

23 THE COURT: Okay.

24 MS. BOZEMAN: That's fine.

25 THE COURT: Okay. Anything else?

1 MS. BOZEMAN: Your Honor, one other thing.  
2 Would there be an opportunity for telephonic  
3 appearances, should the need arise, with Your Honor?

4 THE COURT: Yes. If you -- other than those two  
5 examples that I just gave you of the Magistrate Judge  
6 and the discovery motions, I like to have things on the  
7 docket as much as possible. It's just much easier for  
8 me to track. So if you put in an assented-to motion to  
9 appear telephonically, I will, in most cases, simply  
10 allow that, and the Clerk will put the number on the  
11 docket entry to call in on.

12 I think, if it is substantive motions, you're at  
13 a disadvantage to argue on the phone. But certainly  
14 for these kind of conferences, that's fine.

15 MS. BOZEMAN: Great. Thank you. Thank you,  
16 Your Honor.

17 THE COURT: Anything else?

18 MR. TARANTINO: I think that's it, Your Honor.

19 THE COURT: Okay. Thank you very much.

20 MR. TARANTINO: Thank you, Your Honor.

21 MS. BOZEMAN: Thank you, Your Honor.

22 (Adjourned, 12:15 p.m.)  
23  
24  
25

C E R T I F I C A T I O N

I, Debra D. Lajoie, RPR-FCRR-CRI-RMR, do  
hereby certify that the foregoing pages are a true and  
accurate transcription of my stenographic notes in the  
above-entitled case.

/s/ Debra D. Lajoie

9/19/19